

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE MUNICIPAL DERIVATIVES
ANTITRUST LITIGATION

MDL No. 1950

Master Docket No. 08-2516 (VM)(GWG)

THIS DOCUMENT RELATES TO:

Hon. Victor Marrero

City of Los Angeles (No. 08-10351)

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANTS
BANK OF AMERICA, N.A. AND
MERRILL LYNCH & CO.,
INC. TO CITY OF LOS ANGELES’
SECOND AMENDED COMPLAINT**

Defendants Bank of America, N.A. (“BANA”) and Merrill Lynch & Co., Inc. (“Merrill Lynch”)¹ by their attorneys, King & Spalding LLP, hereby file their Answer to the Second Amended Complaint (“Complaint”) of the City of Los Angeles (“Los Angeles” or “Plaintiff”) as follows:

PRELIMINARY STATEMENT

Pursuant to Federal Rule of Civil Procedure 8(b)(5), any averment in the Complaint as to which Bank of America denies knowledge or information sufficient to form a belief as to its truth shall have the effect of a denial, unless otherwise stated. Bank of America hereby denies any averment in the Complaint that it does not specifically admit.

Counsel for Los Angeles has filed individual actions—16 in total to date—on behalf of a number of California entities, including Los Angeles. The complaints in each of those actions have been represented by counsel for Los Angeles to be identical, but for the allegations in “Part

¹ The term “Bank of America” herein means BANA and Merrill Lynch collectively, except as otherwise noted.

III” of each complaint that describe the plaintiff in each action (Paragraphs 32-33 in the Los Angeles Complaint) and BANA and Merrill Lynch (Paragraphs 35-36 in the Los Angeles Complaint), as well as the allegations in “Part VI” of each complaint that contain plaintiff-specific transactional allegations (Paragraphs 497-618 in the Los Angeles Complaint). On June 28, 2010, Bank of America filed an answer in response to the County of Tulare’s First Amended Complaint in Docket No. 10-628 (S.D.N.Y.). The allegations in the County of Tulare First Amended Complaint have been represented to be, and appear, identical to those alleged by Los Angeles in the Complaint (except for Paragraphs 32-33; 35-36; and 497-618 in the Los Angeles Complaint). Therefore in an effort to streamline the number and length of the filings in these matters, Bank of America files this Answer to Los Angeles’ Complaint and hereby incorporates herein by reference its responses to the County of Tulare’s First Amended Complaint, except for those paragraphs expressly responded to below. Bank of America has discussed this approach with counsel for Los Angeles and counsel did not object to this approach.

Bank of America’s Answer is set forth in numbered paragraphs that correspond to the numbered paragraphs in the Complaint. Bank of America has not answered any averment or characterization that is or may be contained in the headings, sub-headings, or footnotes in the Complaint, and Bank of America shall not be deemed to have admitted the truth or accuracy of any of the information, allegations or characterizations set forth in such headings, sub-headings, or footnotes. Bank of America uses the Complaint’s headings, sub-headings, and footnotes herein only for purposes of organization and neither admits nor denies the appropriateness of the descriptions used by Plaintiff.

The United States Department of Justice (“DOJ”) Antitrust Division has granted Bank of America Corporation, its predecessors and wholly-owned subsidiaries (“BAC”) conditional

leniency under Part A of the DOJ's Corporate Leniency Policy in connection with BAC's reporting of possible bid-rigging or other practices in the municipal derivatives industry violative of the Sherman Act, 15 U.S.C. § 1. In order to receive conditional leniency, BAC was not required, nor did it, admit to the conspiracy alleged by Plaintiff. Instead, BAC was required to report conduct to the DOJ before DOJ had begun an investigation, and to comply with the other five Part A conditions. As the recipient of conditional leniency, the DOJ, subject to BAC's full, continuing, and complete cooperation, agreed not to bring any criminal antitrust prosecution against BAC as well as certain directors, officers, and employees in connection with the matters reported to the DOJ. BAC's cooperation with DOJ, as well as with a number of other federal and state agencies has been full and complete, and continues to this day.

The Antitrust Criminal Penalties Enhancement and Reform Act of 2004, Pub. L. No. 108-237, § 213(a)-(b), 118 Stat. 665, 66-67 (2004) ("ACPERA"), provides that leniency recipients, such as BAC, may eliminate treble damages as well as exposure to joint-and-several liability in actions by civil claimants, in return for "satisfactory cooperation," as determined by the court in which said civil claimants' actions are pending. *Id.* § 213(b). ACPERA excludes "a State or a subdivision of a State" from the definition of a "claimant," and as a result, such States and subdivisions are not entitled to ACPERA cooperation. BAC, however, has entered a written cooperation agreement with counsel on behalf of Plaintiff, pursuant to which BAC is entitled to the damages limitations of ACPERA, in exchange for the cooperation it agreed to provide, has provided, and continues to provide to Plaintiff. As part of its cooperation, and pursuant to its written cooperation agreement with Plaintiff, BAC has provided factual proffers to counsel for Los Angeles concerning evidence, including information from a cooperating witness, of possible anticompetitive activity related to certain derivatives (hereinafter "factual proffers").

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BANK OF AMERICA'S ANSWER

III.

PARTIES

A. Plaintiff

32. Bank of America is without sufficient information to admit or deny the allegations in the first four sentences of Paragraph 32, except that, based on information and belief, Bank of America denies that BANA has been a provider of Municipal Derivatives to Los Angeles and admits that the City of Los Angeles executed a swap with Merrill Lynch on or about March 23, 2006. The remaining allegations in Paragraph 32 constitute legal conclusions to which no response is required.

33. Bank of America is without sufficient information to admit or deny the allegations in the first three sentences of Paragraph 33, except that, based on information and belief, Bank of America denies that BANA has been a provider of Municipal Derivatives to Los Angeles and admits that the City of Los Angeles executed a swap with Merrill Lynch on or about March 23, 2006. The remaining allegations in Paragraph 33 constitute legal conclusions to which no response is required.

B. Defendants

1. Provider Defendants

35. Bank of America admits the allegations in the first sentence of Paragraph 35. The second sentence of Paragraph 35 contains legal conclusions to which no response is required. To the extent that a response is required, Bank of America admits that BANA and Merrill Lynch were counter-parties to certain Municipal Derivatives with public and non-profit entities.

36. Bank of America admits the allegations in the first and second sentences of Paragraph 36 that Merrill Lynch is a Delaware corporation with its principal place of business in Charlotte, North Carolina, and that on January 1, 2009, Merrill Lynch was acquired by BAC through the merger of a wholly-owned subsidiary of BAC with and into Merrill Lynch, with Merrill Lynch continuing as the surviving corporation and as a subsidiary of BAC. The third sentence of Paragraph 36 contains legal conclusions to which no response is required. To the extent that a response is required, Bank of America admits that Merrill Lynch was a counterparty to certain Municipal Derivatives with public and non-profit entities, including the City of Los Angeles.

VI.

LOS ANGELES MUNICIPAL DERIVATIVE TRANSACTIONS

497. The allegations in Paragraph 497 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 497.

498. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 498.

499. The allegations in Paragraph 499 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America denies the allegations in Paragraph 499.

500. The allegations in Paragraph 500 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 500.

501. The allegations in Paragraph 501 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America denies the allegations in Paragraph 501.

A. Reinvestment Derivative Transactions

1. Municipal Improvement Corporation of Los Angeles 2002 Special Tax Lease Revenue Bonds (Police Emergency Command Control Communications System) Reserve Fund GIC

502. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 502.

503. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 503.

504. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 504.

2. Municipal Improvement Corporation of Los Angeles 2002 Special Tax Lease Revenue Bonds (Police Emergency Command Control Communications System) Project Fund GIC

505. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 505.

506. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 506.

507. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 507.

3. Municipal Improvement Corporation of Los Angeles 2002 Real Property Program AQ Project Fund GIC

508. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 508.

509. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 509.

510. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 510.

4. Municipal Improvement Corporation of Los Angeles 2002 Real Property Program AQ Capitalized Interest Fund GIC

511. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 511.

512. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 512.

513. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 513.

514. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 514.

5. Municipal Improvement Corporation of Los Angeles 2002 Real Property Program AQ Reserve Fund GIC

515. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 515.

516. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 516.

517. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 517.

6. Municipal Improvement Corporation of Los Angeles 2002 Real Property Program AR Reserve Fund GIC

518. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 518.

519. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 519.

520. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 520.

7. Municipal Improvement Corporation of Los Angeles 2002 Leasehold Revenue Refunding Bonds City of Los Angeles Central Library Project Reserve Fund GIC

521. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 521.

522. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 522.

523. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 523.

8. Municipal Improvement Corporation of Los Angeles 2002 Equipment Program AN Reserve Fund GIC

524. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 524.

9. Los Angeles 2002 Landscaping and Lighting District 96-1 Assessment Bonds Construction Fund GIC

525. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 525.

526. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 526.

527. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 527.

10. Municipal Improvement Corporation of Los Angeles Certificates of Participation Equipment and Real Property Acquisition Program AU Reserve Fund GIC

528. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 528.

529. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 529.

530. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 530.

11. Municipal Improvement Corporation of Los Angeles Certificates of Participation Equipment and Real Property Acquisition Program AU Capitalized Interest Fund GIC

531. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 531.

532. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 532.

533. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 533.

12. Municipal Improvement Corporation of Los Angeles Certificates of Participation Equipment and Real Property Acquisition Program AU Acquisition Fund GIC

534. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 534.

535. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 535.

536. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 536.

13. Municipal Improvement Corporation of Los Angeles Certificates of Participation Equipment and Real Property Acquisition Program T Reserve Fund GIC

537. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 537.

538. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 538.

539. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 539.

14. Municipal Improvement Corporation of Los Angeles Certificates of Participation Equipment and Real Property Acquisition Program T Acquisition Fund GIC

540. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 540.

541. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 541.

542. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 542.

15. City of Los Angeles 2002 Tax and Revenue Anticipation Notes Proceeds Fund / Debt Service Fund GIC

543. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 543.

544. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 544.

545. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 545.

16. City of Los Angeles CFD 4 (Playa Vista - Ph. 1) 2003 Special Tax Bonds Escrow Fund GIC

546. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 546.

547. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 547.

548. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 548.

17. City of Los Angeles CFD 4 (Playa Vista - Ph. 1) 2003 Special Tax Bonds Capitalized Interest Fund GIC

549. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 549.

550. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 550.

551. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 551.

552. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 552.

18. City of Los Angeles 2004 Tax and Revenue Anticipation Notes Proceeds Fund and Debt Service Fund GIC

553. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 553.

554. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 554.

555. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 555.

556. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 556.

19. Municipal Improvement Corporation of Los Angeles Certificates of Participation Refunding Program AY Reserve Fund GIC

557. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 557.

558. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 558.

559. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 559.

20. City of Los Angeles Solid Waste Resources Revenue Bonds, Series 2006-A Project Fund GIC

560. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 560.

561. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 561.

562. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 562.

21. City of Los Angeles Solid Waste Resources Revenue Bonds, Series 2006-A Reserve Fund GIC

563. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 563.

564. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 564.

565. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 565.

22. City of Los Angeles 2006 Tax and Revenue Anticipation Notes GIC

566. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 566, except that, based on information and belief, Bank of America admits that on July 6, 2006, BANA submitted a 5.549% bid in connection with the municipal derivative referenced in Paragraph 566.

567. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 567, except that, based on information and belief, Bank of America admits that on July 6, 2006, Danielle Lardinais submitted the bid on behalf of BANA in connection with the municipal derivative referenced in Paragraph 566.

568. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 568, except that, based on information and belief, Bank of America admits that PFM Asset Management LLC served as the investment advisor to Los Angeles in connection with the municipal derivative referenced in Paragraph 566.

23. Municipal Improvement Corporation of Los Angeles Revenue Bonds, Series 2006-A Police Headquarters Facility and Public Works Building Project Fund GIC

569. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 569.

570. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 570.

571. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 571.

24. City of Los Angeles 2007 Tax and Revenue Anticipation Notes GIC

572. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 572.

573. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 573.

25. City of Los Angeles 2008 Tax and Revenue Anticipation Notes GIC

574. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 574.

575. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 575.

576. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 576.

B. Swap Transactions

1. City of Los Angeles Convention And Exhibition Center Authority Lease Revenue Refunding Bonds, 2003 Refunding Series B-1, B-2, C-1, C-2, D, E, and F (Fixed and Variable Rate) SWAPs

a. CDC SWAP

577. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 577.

578. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 578.

579. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 579.

580. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 580.

b. Society [sic] Generale Swap

581. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 581.

582. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 582.

583. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 583.

584. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 584.

2. City of Los Angeles Wastewater System Subordinate Revenue Bonds, Series 2006A-D Interest Rate SWAPs

585. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 585.

586. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 586.

587. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 587.

588. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 588.

589. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 589.

C. Repeat Appearances Of The Same Representatives Of The Same Defendants In Los Angeles Municipal Derivative Transactions

590. The allegations in Paragraph 590 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 590.

591. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 591.

1. The Same Representatives of Nine Provider Defendants Appeared In Six Auctions Together Along With Other Repeat Players

592. The allegations in Paragraph 592 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 592.

593. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 593.

594. The allegations in Paragraph 594 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 594.

595. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 595.

596. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 596.

2. Six Representatives For Four Provider Defendants Engaged In Auction Bidding Involving Eight Transactions

597. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 597.

598. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 598.

599. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 599.

600. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 600.

601. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 601.

602. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 602.

603. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 603.

3. Fifteen Representatives For Fifteen Provider Defendants Engaged In Auction Bidding Involving Five Transactions

604. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 604.

605. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 605.

606. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 606.

607. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 607.

608. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 608.

609. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 609, except as set forth in response to Paragraphs 566-568 above.

4. Four Representatives For Four Provider Defendants Engaged In Auction Bidding Involving Two Transactions

610. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 610.

611. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 611.

5. Four Representatives For Four Provider Defendants Engaged In Auction Bidding Involving One Transaction

612. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 612.

613. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 613.

D. The Same Representatives For The Same Provider Defendants Were Engaged In Auction Bidding For Los Angeles, Stockton, and Contra Costa

614. The allegations in Paragraph 614 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 614.

615. The allegations in Paragraph 615 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 615.

616. The allegations in Paragraph 616 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 616.

617. Bank of America is without sufficient information to admit or deny the allegations in Paragraph 617.

618. The allegations in Paragraph 618 consist of legal conclusions to which no response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in Paragraph 618.

JURY TRIAL DEMAND

Bank of America admits that Plaintiff purports to demand a jury trial in the Complaint's "Jury Trial Demand." The "Jury Trial Demand," however, does not contain allegations to which a response is required. To the extent a response is required, Bank of America is without sufficient information to admit or deny the allegations in the "Jury Trial Demand." Bank of America hereby demands a jury trial.

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BANK OF AMERICA'S AFFIRMATIVE DEFENSES

Bank of America states the following defenses without assuming the burden of proof of such defenses that would otherwise rest on Plaintiff:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims, or some of them, are barred, in whole or in part, by the doctrines of unclean hands and *in pari delicto*.

THIRD AFFIRMATIVE DEFENSE

Any recovery by Plaintiff is barred, or must be reduced, as a result of Plaintiff's failure to mitigate any alleged damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred, in whole or in part, because the losses or damages, if any, are speculative, uncertain, or otherwise not cognizable.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has incurred no damages as a result of Bank of America's conduct.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's damages and/or losses, if any, were not proximately caused by Bank of America.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of res judicata and collateral estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing and/or capacity to assert the claims asserted in the Complaint.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has already been compensated for the damages and/or losses claimed in this action.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by laches.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the equitable doctrines of estoppel and/or waiver.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of accord and satisfaction.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, or some of them, are barred in whole or in part or must be reduced by the set-off doctrine.

FOURTEENTH AFFIRMATIVE DEFENSE

Any recovery by Plaintiff is barred or must be reduced as provided for in the cooperation agreement between Plaintiff and BAC and as contemplated by the damages limitations provisions of the Antitrust Criminal Penalties Enhancement and Reform Act of 2004, Pub. L. No. 108-237, § 213(a), 118 Stat. 665, 66-67 (2004) ("ACPERA").

FIFTEENTH AFFIRMATIVE DEFENSE

Bank of America hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserves its right to amend this Answer to assert all such defenses..

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Bank of America asserts, and expressly reserves all rights with respect to, all other affirmative defenses that may be revealed during the course of discovery.

Dated: June 28, 2010

By: _____



Kevin R. Sullivan (*pro hac vice*)
Patricia L. Maher (*pro hac vice*)
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